Filed 2/2/10 In re A.H. CA2/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re A.H., a Person Coming Under the Juvenile Court Law.	B215279 (Los Angeles County Super. Ct. No. CK76008)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. CARLA H., Defendant and Appellant.	

APPEAL from orders of the Superior Court of Los Angeles County. Marguerite Downing, Judge. Affirmed.

Amy Z. Tobin, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of County Counsel, James M. Owens, Assistant County Counsel, Aileen Wong, Deputy County Counsel, for Plaintiff and Respondent.

In this dependency matter (Welf. & Inst. Code, § 300),[1] contrary to the contention of appellant Carla H. (mother), the juvenile court did not abuse its broad discretion in transferring the matter to Santa Clara County, where father resides and the two children had been relocated. Nor did the court err in not considering placement of the children with a maternal cousin, because mother had voluntarily agreed to placement with father's female companion in San Jose when mother signed the mediation agreement.

FACTUAL AND PROCEDURAL SUMMARY

In January of 2009, mother was the custodial parent of the children when the Los Angeles County Department of Children and Family Services (DCFS) filed a dependency petition on behalf of her two sons, A.H. and D.H. (now approximately 11 and eight years of age), and removed them from her care. A DCFS social worker and Los Angeles Police Department officers found mother hallucinating and under the influence of drugs, the children exposed to drug usage (methamphetamine) in the house, and domestic violence between mother and her boyfriend. The home was unsanitary; there was rotten food, rancid water, and trash strewn about.

A DCFS social worker contacted father, who lives with his girlfriend in San Jose. Father is a computer technologist who earns approximately $85,000 a year. According to father, he previously had an even more lucrative job with long hours, and then he unsuccessfully attempted to start his own business. Father's alcoholism, an affair, and marital discord resulted in separation from mother. Until several years ago, father was the children's primary caretaker. Father had custody of the children for approximately three years, but then moved to Northern California and allowed the children to reside with mother. Father had regular visits with the children until October of 2008, when mother obtained a restraining order against him. Father asserted that mother made false allegations against him after he attempted to protect the children from her when he learned mother was using drugs again and her male companion was a drug addict. Father

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[1] All statutory references are the Welfare and Institutions Code, unless otherwise indicated.

is now thankful for DCFS intervention and wants his sons to live with him and his girlfriend in San Jose.

Father had several arrests for driving under the influence and had a suspended driver's license. Father admitted past alcohol and cocaine abuse, and he did not complete a drug and alcohol treatment program. However, father asserted he no longer used any drugs and was not a heavy drinker any more.

In March of 2009, pursuant to a mediated agreement, the juvenile court sustained the following allegations: (1) mother had an unresolved history of substance abuse and was a user of methamphetamine, which periodically limited her ability to provide regular care for the children, and she had created a detrimental and dangerous home environment, including having methamphetamine in the home, keeping the home unsanitary, using drugs in the home, and hallucinating while under the influence of drugs; (2) father had an unresolved history of substance abuse and used alcohol, which periodically limited his ability to provide regular care for the children and placed them at a risk of harm; and (3) mother and her boyfriend exposed the children to physical altercations, including the boyfriend's striking and threatening mother.

Also pursuant to the mediated agreement, the parties agreed that the children would be placed with father's female companion (K.D.), with father permitted to live in the home of that caretaker on the condition that he test negative for drugs and alcohol. Mother was allowed to have monitored visits, with DCFS to have discretion to liberalize the visits, and was directed to participate in individual counseling with a licensed therapist regarding case issues, including domestic violence. Father was not allowed to operate a vehicle with the children in the car unless he had a valid driver's license. Both mother and father were to complete a parenting program and to participate in a substance abuse program with random drug testing. Moreover, the children were to participate in individual counseling and to have no contact with mother's boyfriend. The parties specifically did not agree regarding transferring the case to Santa Clara County, where both the caretaker and father reside.

In April of 2009, at the disposition hearing, the juvenile court admitted into evidence various reports, and the parties argued over whether the court should transfer the matter to Santa Clara County. Counsel for DCFS argued that the case should be transferred to Santa Clara County. Counsel for the children argued that it was in the children's best interest to receive the appropriate services from Santa Clara County, which could more suitably manage the case. Mother's counsel argued against transferring the case, noted that mother had made prompt and commendable progress in a drug program and in counseling, and requested that the children be placed with a maternal cousin in Los Angeles County, who resides in Porter Ranch. Father's counsel noted that father was in "a full program in Santa Clara County." Father's counsel joined with DCFS and counsel for the children in urging the court to find it was "in the best interest of the children to transfer the case" and "ask[ed] the court to find it's in the best interest of the children to remain in Santa Clara County where they're receiving excellent care."

The juvenile court declared the children dependents of the court. It ordered DCFS to provide mother with reunification services, including a substance abuse program with random drug testing, parent education, and individual counseling to address case issues. The court ordered reunification services for father, including completion of a drug rehabilitation program with random drug testing and parent education. It also ordered the children to participate in individual counseling, and granted father unmonitored visits as long as he complied with the case plan and granted mother monitored visits. After making its disposition findings and orders, the court transferred the case to Santa Clara County.

Mother appeals.

DISCUSSION

I. The juvenile court's order transferring the case to Santa Clara County was not an abuse of its broad discretion.

Mother contends that because both the children and mother resided in Los Angeles County, the juvenile court therefore abused its discretion when it transferred the case to Santa Clara County. The claim is without merit.

Pursuant to section 375, if the residence of the person who would be legally entitled to the custody of a child—were it not for the existence of a dependency court order—is changed to another county, the entire case "may be transferred" to the juvenile court of the county of the child's legal custodian. Pursuant to section 17.1, subdivision (a), generally the residence of a child is determined by the "residence of the parent with whom a child maintains his or her place of abode or the residence of any individual who has been appointed legal guardian or the individual who has been given the care or custody by a court . . . ."

According to mother, merely placing a child with a foster parent or relative in a another county is not sufficient to change the child's legal residence for purposes of a transfer order, because the child is only "placed" with that caregiver; custody and control of the minor remains with the social services agency and the juvenile court in the original county. Mother argues that the children's legal residence at the time of detention was Los Angeles County, because they were living with mother, who had been granted custody, and the order placing the children with K.D. in Santa Clara County did not change the children's residence. Thus, mother argues that because she had custody of the children before the dependency petition was filed, her residence and that of the children was Los Angeles County, and the case was improperly transferred.

Mother's reliance on section 375 is misplaced. That section "does not require transfer to a county where the natural parent resides. The statute states that the 'entire case may be transferred . . . .' (§ 375.) The word 'may' as it appears in the Welfare and Institutions Code has a permissive rather than a mandatory meaning." (*In re Christopher T.* (1998) 60 Cal.App.4th 1282, 1291.) Also, California Rules of Court, rule

5.610(d) (formerly rule 1425) "specifically permits a change of venue when the minor is moved to a different county. When the entire dependency scheme is construed together as it must be [citations], it is clear section 375 allows a transfer to the county of the natural parent's residence. However, rule [5.610(d)] . . . also permits transfer to the minor's residence. Section 375 and rule [5.610(d)] address two separate grounds for a venue change, with the minor's best interests always being the primary concern. [Citations.] Moreover, there is no reason to read into section 375 the limitations suggested by the mother and no injustice will result when dependency proceedings are heard in the county of the child." (*In re Christopher T., supra*, 60 Cal.App.4th at pp. 1291-1292.)

The other statute relied upon by mother in the present case, section 17.1, subdivision (a), also supports this conclusion. Section 17.1 declares the residence of the child to be determined by the residence of the parent, or the legal guardian, or the person "given the care or custody [of the child] by a court." Here, the court order placed the children with K.D. in Santa Clara County, which thus may be deemed the county of residence of the children.

Accordingly, the juvenile court acted well within its broad discretion in transferring the case to Santa Clara County. It was the county where the parties, pursuant to the mediated agreement, had agreed that the children would be placed with father's female companion (K.D.), with father permitted to live in the home of that caretaker, and it was the county where the children were then currently residing.

II. The juvenile court made an implied finding that the transfer was in the best interest of the children and did not err in its placement order.

Mother's complaint that the juvenile court failed to make a finding that the transfer was in the best interest of the children is unavailing. Nor did the court improperly ignore mother's request for consideration of the maternal cousin for possible placement.

The issue of whether the transfer to Santa Clara County was in the best interest of the children was brought to the court's attention at the disposition hearing. Father's

counsel joined with DCFS and counsel for the children in specifically urging the court to find it was "in the best interest of the children to transfer the case" and "ask[ed] the court to find it's in the best interest of the children to remain in Santa Clara County where they're receiving excellent care." When the court transferred the case, it was not required to utter "'magic words'" (see, e.g., *In re Marriage of Leonard* (2004) 119 Cal.App.4th 546, 561, fn. 13), such as the phrase the "best interest" of the children. Counsel specifically focused on the best interest requirement. The court thus was aware of the requirement and impliedly found that the transfer it ordered was indeed in the best interest of the children. (Cf. *In re Joshua R.* (2002) 104 Cal.App.4th 1020, 1026; *In re Corienna G.* (1989) 213 Cal.App.3d 73, 83-84.)

Moreover, the record supports the conclusion that the transfer was in the children's best interest. As counsel for the children urged, the children would receive appropriate services from Santa Clara County, and that county could more suitably manage the case. Also, the children's best interest would be served because both the children and father reside in Santa Clara County, and the children indicated they wanted to live with their father in San Jose. The children were already living there and were doing well in K.D.'s home, where they had adjusted to their living arrangements. Father was working on reunifying with the children by complying with the case plan, which Santa Clara County could better monitor. Additionally, the children needed individual counseling services, which Santa Clara County was better equipped to provide. As the DCFS social worker candidly acknowledged, Los Angeles County has limited resources to ensure the children's safety and well being when the home is located in another county. Thus, the court acted well within its broad discretion in transferring the case to Santa Clara County.

Regarding the possibility of placing the children with a relative, the court did not improperly ignore mother's request for placement with the maternal cousin. Because in the signed mediated agreement mother had voluntarily agreed to placement of the children with K.D., father's female companion, mother cannot now complain about that aspect of the placement order. Fundamental notions of waiver and estoppel (see *In re*

S.B. (2004) 32 Cal.4th 1287, 1293, fn. 2; *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 403) preclude mother from asserting any failure to consider placement with a relative. Also, we note that a maternal cousin is not within the category of relatives entitled by statute to preferential consideration as to placement. (§ 361.3, subd. (c)(2).)

Accordingly, the court impliedly found that the transfer of the case to Santa Clara County was in the best interest of the children, the court properly exercised its broad discretion in ordering the transfer, and it did not err in its placement order.

DISPOSITION

The orders under review are affirmed.

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BOREN, P.J.

We concur:

ASHMANN-GERST, J.

CHAVEZ, J.